the concept found in formulated law to phenomena which were not originally contained in the concept, without, however, changing the nature of the concept as such'; while Kohler would interpret a rule of law sociologically, that is, 'as a product of the whole people whose organ the law-maker has become.' The French professor, the Austrian jurist and the German legal philosopher are thus in agreement on the doctrine of the interpretation of a rule of law by a proper exercise of free judicial decision. Dean Pound calls attention to the fact (p. 225) that our own Supreme Court has already taken a long step in the same direction. Justice HOLMES' statement in *Lochner* v. *New York*, 198 U. S. 45, that, "The decision will depend on a judgment or intuition more subtle than any articulate major premise," though given in a dissenting opinion seems to have received the endorsement of the Court in *Muller* v. *Oregon*, 208 U. S. 412, in which Mr. Justice BREWER said, "We take judicial cognizance of matters of general knowledge."

If this last decision is good law, it would seem that not only the various continental countries but also our own highest tribunal have by different routes arrived at the same destination and this too, not by any conscious imitation of the one by the other but because of the irresistible logic of the situations in which the courts have found themselves.

The Science of Law and possibly the entire Legal Philosophy Series would thus seem to be justified; philosophically, because jurists in different parts of the world and under diverse systems of law have been inevitably carried to the same goal in their search for a broader and more perfect justice; legally, because the results arrived at are not out of harmony with the several systems of law under which they have been reached. JOSEPH H. DRAKE.

WAIVER DISTRIBUTED AMONG THE DEPARTMENTS ELECTION, ESTOPPEL, CONTRACT, RELEASE. By John S. Ewart, K. C., LL. D. Foreword by Roscoe Pound, Ph. D., LL. D. Cambridge, Harvard University Press, 1917; pp. XX, 304.

Until the appearance of the illuminating discussions of Dr. Ewart in this and allied fields began to appear, that word the meaning of which was least well understood, the word most often used in judicial fog and legal delirium, was "waiver." In the whole territory of the law there was no other so popular a "city of refuge" for a soul lost in the legal wilderness as that one over whose wide open gates was written "waiver."

It seems not too much to say of this book, "Waiver Distributed," that it is entitled to take its place among the modern legal classics, of which, in this age of digests and compilations, it is a satisfaction to believe we have a few. It is a study, not so much upon authority in the sense that the author is attempting to discover in judicial utterance or other authoritative discussion the principles involved, as it is an attempt to show that jurists and other legal writers have failed to discover the legal concepts hidden in the term "waiver," and in this his attempt amounts to a demonstration.

While the treatment is notably that of a scholar it is not academic but intensely practical. In this book Dr. Ewart has rendered a real and very substantial service in several branches of the law. This is peculiarly true as to the law of insurance and that of landlord and tenant where the term waiver is almost ubiquitous. Had this book been written a half century earlier many of the vagaries now found in the law of insurance would never have developed. Although the faulty and inaccurate use of this term may not be so outstanding in other branches of the law, it is all too common in that of landlord and tenant and in some other phases of the law of contract.

It is too much to hope that courts are at once going to make clear distinctions between "election" and "waiver," "estoppel" and "waiver," "contract" and "waiver," for "waiver" is too convenient a word for the loose thinking lawyer. But the ideas here promulgated and distinctions drawn are bound gradually to work their way into the law to its real enrichment and to the great satisfaction of the discriminating lawyer.

The reader can by no means afford to miss the scholarly, pungent and characteristic foreword of Professor Pound.

As is appropriate for so good a book it is attractively printed and serviceably bound.

VICTOR H. LANE.

EQUITY IN ITS RELATIONS TO COMMON LAW, by William W. Billson, of the Minnesota Bar. Boston. The Boston Book Comapny, 1917; pp. xii, 283.

The thesis which this book is written to support is that in the last analysis equitable rights are proprietary. Mr. Billson is under the impression that the contrary teaching of Langdell is still accepted without question in most law schools and that hence the time is come for a careful study of questions "which appear never to have received as systematic discussion as they deserve. . . ." To anyone who is familiar with Dean Pound's masterly exposition of equity, or with Professor Hohfeld's articles, Mr. Billson's thesis will not appear as novel as he naively assumes. His book comes too late to inaugurate a revolution; though the author's conclusions will perhaps find general acceptance, it is because of arguments other than his own. The discussion of the development of equitable interests in Huston's "The Enforcement of Decrees in Equity" is much more convincing.

Had Mr. Billson confined himself to modern cases, his book would be briefer but more valuable. In the last two chapters he shows distinct ability in analysis and his conclusions are stated forcefully. But the foundation upon which he seeks to build is thoroughly unsubstantial. Without any first-hand acquaintance with mediaeval English law he attempts to write history; with a very imperfect knowledge of Roman law he devotes a chapter to "Law's Dualism in Rome and England." The result is what might be anticipated: there is neither history nor comparative law. The weakness of this portion of the book goes far to destroy the usefulness of the whole.

WILLARD BARBOUR.